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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ASHLEY SCHWARTZ-EARP, Plaintiff, v. ADVANCED CALL CENTER TECHNOLOGIES, LLC, et al., Defendants.	Case No.: 15-CV-01582-MEJ **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** Hearing Date: March 17, 2016 Hearing Time: 10:00 a.m. Courtroom.: B [Notice of Motion, Memorandum of Points and Authorities, and Declarations of Marc Keller and Adrian T. Lambie filed concurrently]

Pursuant to Section G of this Court's Case Management Order, entered on July 17, 2015, Defendant ADVANCED CALL CENTER TECHNOLOGIES, LLC ("Defendant") submits the following Statement of Undisputed Material Facts in support of its concurrently-filed Motion for Summary Judgment or, in the alternative, Partial Summary Judgment as to each claim for relief in the Complaint of Plaintiff ASHLEY SCHWARTZ-EARP ("Plaintiff").

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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
1. On or about February 3, 2014, Plaintiff applied in-store for a JCPenney-branded credit card, issued by Synchrony Financial ("Synchrony"). *January 20, 2016 Deposition of Plaintiff* (*"Pltf. Depo."*) at 16:12-24, 23:23-24 (*Declaration of Adrian T. Lambie* [*"Lambie Decl."*] at Exhibit 1).	
2. As part of the application process, the cashier asked Plaintiff for her telephone number and Plaintiff provided the number (925) 209-4306. *Pltf. Depo.* at 36:24-37:25 (*Lambie Decl.* at Exhibit 1).	
3. Plaintiff did not tell the cashier that the telephone number she had provided was a cell phone. *Pltf. Depo.* at 41:25-42:11 (*Lambie Decl.* at Exhibit 1).	
4. Plaintiff's application was immediately approved, and she received a temporary bar code, which she used to make purchases. *Pltf. Depo.* at 42:12-24 (*Lambie Decl.* at Exhibit 1).	
5. Eventually, Plaintiff received a permanent credit card in the mail, which she used to make additional purchases. *Pltf. Depo.* at 42:25-43:1, 45:8-10 (*Lambie Decl.* at Exhibit 1).	
6. Plaintiff made payments on her credit card account until late 2014, when she claims online access to her account was disabled. *Pltf. Depo.* at 52:5-18 (*Lambie Decl.* at Exhibit 1).	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
7. At the time Plaintiff stopped making payments on her credit card account, she had an outstanding balance of approximately $350. *Pltf. Depo.* at 59:11-17 (*Lambie Decl.* at Exhibit 1).	
8. Plaintiff's credit card account remained overdue as of her January 16, 2016 deposition in this matter. *Pltf. Depo.* at 70:23-71:6 (*Lambie Decl.* at Exhibit 1).	
9. Defendant engages in the collection of debts on behalf of creditors, including Synchrony. *Declaration of Marc Keller* (*"Keller Decl."*) at ¶ 1.	
10. Synchrony placed Plaintiff's credit card account with Defendant for collections on January 17, 2015. *Keller Decl.* at ¶ 12.	
11. All calls that Defendant placed to Plaintiff were for the sole purpose of collecting Plaintiff's debt on behalf of Synchrony. Defendant did not place any calls to Plaintiff for any other purpose, including advertisement or solicitation. *Keller Decl.* at ¶ 25.	
12. Between January 17, 2015 and February 22, 2015, Defendant placed 134 calls to Plaintiff at the number (925) 209-4306. *Call Log* (*Keller Decl.* at Exhibit 3).	
13. All calls from Defendant to Plaintiff were placed between 8:00 a.m. and 6:30 p.m. Pacific Time. *Call Log* (*Keller Decl.* at Exhibit 3).	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
14. Plaintiff has resided in the Pacific Time Zone throughout the relevant period. *Pltf. Depo.* at 7:5-8, 7:22-8:7.	
15. Defendant never placed more than five calls to Plaintiff in a single day. *Call Log* (*Keller Decl.* at Exhibit 3).	
16. Defendant allowed at least 90 minutes to elapse between each call that it placed to Plaintiff. *Call Log* (*Keller Decl.* at Exhibit 3).	
17. Defendant never intentionally left voicemails for Plaintiff. *Keller Decl.* at ¶ 8.	
18. Defendant's dialing software uses a voice recognition algorithm to distinguish live people from answering machines. In the unlikely event that the algorithm mistakes an answering machine for a live person, a brief message may be left unintentionally. *Keller Decl.* at ¶¶ 8, 9.	
19. The first 119 calls that Defendant placed to Plaintiff were not answered. *Call Log* (*Keller Decl.* at Exhibit 3).	
20. The first and only call from Defendant that Plaintiff answered was placed on February 13, 2015 at approximately 4:16 p.m. Pacific Time. *Call Log* (*Keller Decl.* at Exhibit 3).	
21. During the February 13, 2015 call, Plaintiff expressly consented to receiving further calls from Defendant at the same telephone number. *Transcript of February 13, 2015 Call* at 4:1-7 (*Lambie Decl.* at Exhibit 2).	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	**OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**
22. The remaining 14 calls that Defendant placed to Plaintiff were not answered. *Call Log* (*Keller Decl.* at Exhibit 3).	
23. The last call from Defendant to Plaintiff was placed at approximately 11:33 a.m. Pacific Time on February 22, 2015. *Call Log* (*Keller Decl.* at Exhibit 3).	
24. On February 22, 2015 at approximately 1:06 p.m. Pacific Time, Plaintiff called Defendant and agreed to a payment plan to bring her credit card account current. *Transcript of February 22, 2015 Call* at 4:1-7 (*Lambie Decl.* at Exhibit 3).	
25. On February 23, 2015 at approximately 2:28 p.m. Pacific Time, Plaintiff called Defendant and asked to modify the payment plan she had previously agreed to. *Transcript of February 23, 2015 Call* (*Lambie Decl.* at Exhibit 4).	
26. On February 25, 2015 at approximately 12:25 p.m. Pacific Time, Plaintiff called Defendant and asked to cancel the payment plan that she had previously agreed to. *Transcript of February 25, 2015 Call* (*Lambie Decl.* at Exhibit 5).	
27. During the February 25, 2015 call, Plaintiff asked for Defendant to stop calling her and Defendant's collections agent stated that the calls would cease. *Transcript of February 25, 2015 Call* at 4:4-5:5 (*Lambie Decl.* at Exhibit 5).	
28. There was no further contact between Defendant and Plaintiff until the commencement of this lawsuit. *Call Log* (*Keller Decl.* at Exhibit 3).	

Dated: February 11, 2016

MURPHY, PEARSON, BRADLEY & FEENEY

By /s/ Adrian T. Lambie
Adrian T. Lambie
Attorneys for Defendant
ADVANCED CALL CENTER TECHNOLOGIES, LLC

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